

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**RANDAL D RUENGER**  
Claimant

**CIVCO MEDICAL SOLUTIONS**  
Employer

**APPEAL NO. 14A-UI-10436-GT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/07/14  
Claimant: Appellant (2)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated September 30, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on October 27, 2014. Claimant participated personally. Claimant's Exhibit A was admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on September 9, 2014.

Employer discharged claimant on September 10, 2014 because claimant had accrued points for absences under employer's attendance policy. Some of the points were for personal time off, and some of the absences were for necessary medical treatment.

Employer has a no-fault absenteeism policy which assesses points when an employee is absent for any reason. Doctor's notes excusing days off are generally not accepted, and missing work for those reasons would not be considered an excused absence.

Employer's tally of attendance points is on their computer system, and claimant was not able to access and understand how many points he had accrued. Claimant did not know that he was at the point of termination on the last occurrence of being absent. Claimant had not been warned that if he took any more time off work for any reason his employment would be in jeopardy.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984).

See, *Gimbel v. Emp't Appeal Bd.*, 489 N.W.2d 36 (Iowa Ct. App. 1992) where a claimant's late call to the employer was justified because the claimant, who was suffering from an asthma attack, was physically unable to call the employer until the condition sufficiently improved; and *Roberts v. Iowa Dep't of Job Serv.*, 356 N.W.2d 218 (Iowa 1984) where unreported absences are not misconduct if the failure to report is caused by mental incapacity.

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. A failure to report to work without notification to the employer is generally considered an unexcused absence. However, one unexcused absence is not disqualifying since it does not meet the excessiveness standard. Because his absences were otherwise related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed.

**DECISION:**

The decision of the representative dated September 30, 2014, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Duane L. Golden  
Administrative Law Judge

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Decision Dated and Mailed

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